

Federal Retirement Thrift Investment Board

§ 1605.14

(1%) contributions that would have been contributed to the participant's account had the reduction in pay leading to the back pay award or other retroactive pay adjustment not occurred; and

(3) If the participant is entitled to lost earnings pursuant to 5 CFR part 1606, the employing agency must also submit lost earnings records.

(c) *Contributions to be deducted before payment or other retroactive pay adjustment.* Employee makeup contributions required under paragraphs (a) and (b) of this section:

(1) Must be computed before the back pay award or other retroactive pay adjustment is paid, deducted from the back pay or other retroactive pay adjustment, and submitted to the TSP record keeper;

(2) Must not cause the participant to exceed the annual contribution limit(s) contained in sections 402(g) and 415(c) of the I.R.C. (26 U.S.C. 402(g) and 415(c)) for the year(s) with respect to which the contributions are being made, taking into consideration the TSP contributions already made in (or with respect to) that year; and

(3) Must be accompanied by attributable agency matching contributions. In any event, regardless of whether a participant elects to make up employee contributions, the employing agency must make all appropriate agency automatic (1%) contributions associated with the back pay award or other retroactive pay adjustment.

(d) *Prior withdrawal of TSP account.* If a participant has withdrawn his or her TSP account, other than by purchasing an annuity, and the separation from Government employment upon which the withdrawal was based is reversed, resulting in reinstatement of the participant without a break in service, the participant will have the option to restore the amount withdrawn to his or her TSP account. The right to restore the withdrawn funds will expire if notice is not provided by the participant to the Board within 90 days of reinstatement. If the participant returns the funds that were withdrawn, they will be posted to the participant's account based on his or her contribution allocation of record at the time of separation. If no contribution allocation is

on file, the contributions will be invested in the G Fund. No lost earnings will be paid on any restored funds.

(e) Participants who are covered by paragraph (d) of this section and who elect to return funds that were withdrawn may also elect to reinstate a loan which was previously declared to be a taxable distribution.

§ 1605.14 Misclassified retirement coverage.

(a) If a CSRS participant is misclassified by an employing agency as a FERS participant, when the misclassification is corrected:

(1) Employee contributions that exceed the applicable contribution percentage for the pay period(s) involved may remain in the participant's account. However, the participant may choose to have such employee contributions or all of the employee contributions made during the period of misclassification removed from his or her account and refunded to the participant. If the participant requests a refund of employee contributions, the employing agency must submit negative adjustment records, under the procedures of §1605.12, to request removal of these funds;

(2) The employing agency must, under the procedures of §1605.12, remove all employer contributions made to the participant's account during the period of misclassification. Employer contributions that have been in the account for less than one year will be returned to the employing agency; employer contributions that have been in the participant's account for one year or more will be removed from the account and used to offset TSP administrative expenses; and

(3) If the employing agency fails to submit a negative adjustment record under the procedures of §1605.12(b) to remove employer contributions, after all such contributions have been in the participant's account for more than one year the TSP recordkeeper will remove them from the account and use such amounts to offset TSP administrative expenses.

(b) If a FERS participant is misclassified by an employing agency as a CSRS participant, when the misclassification is corrected:

§ 1605.15

(1) The participant may not elect to have the contributions made while classified as CSRS removed from his or her account;

(2) The participant may, under the rules of § 1605.11, elect to make up contributions that he or she would have been eligible to make as a FERS participant during the period of misclassification;

(3) The employing agency must, under the rules of § 1605.11, make agency automatic (1%) contributions and agency matching contributions on employee contributions that were made while the participant was misclassified;

(4) The employing agency must submit lost earnings records for makeup employer contributions pursuant to 5 CFR part 1606; and

(5) If the retirement coverage correction is a FERCCA correction, the participant is entitled to lost earnings on makeup employee contributions and the employing agency must submit lost earnings records pursuant to 5 CFR part 1606. However, if employee contributions were made up before the Office of Personnel Management implements its regulations on FERCCA corrections, the amount of lost earnings will be calculated by the Office of Personnel Management, pursuant to its regulations, and provided to the employing agency for transmission to the TSP record keeper.

(c) If a participant was misclassified as either FERS or CSRS and the retirement coverage is corrected to FICA only, the participant is no longer eligible to participate in the TSP.

(1) Employee contributions in the account are subject to the rules in paragraph (a)(1) of this section.

(2) Employer contributions in the account are subject to the rules in paragraphs (a)(2) and (a)(3) of this section.

(3) The participant will be deemed to be separated from Federal service for all TSP purposes. If the participant has an outstanding loan, it will be subject to the provisions of 5 CFR 1655.13. The participant may make a TSP post-employment withdrawal election pursuant to 5 CFR part 1650, subpart B, and the withdrawal will be subject to the provisions of 5 CFR 1650.60(b).

5 CFR Ch. VI (1–1–03 Edition)

(d) If a FERS or CSRS participant is misclassified by an employing agency as FICA only, when the misclassification is corrected the participant may, pursuant to § 1605.11 of this part, elect to make up contributions that he or she would have been eligible to make as a FERS or CSRS participant during the period of misclassification. If the participant makes up employee contributions, the rules in paragraph (b)(5) of this section apply. If the participant is corrected to FERS, the rules in paragraphs (b)(3) and (b)(4) of this section also apply.

§ 1605.15 [Reserved]

§ 1605.16 Claims for correction of employing agency errors; time limitations.

(a) *Agency's discovery of error.* (1) Upon discovery of an error made within the past six months involving the correct or timely remittance of payments to the TSP (other than a contribution allocation error as covered in paragraph (a)(2) of this section or a retirement system misclassification error, as covered in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) An employing agency must promptly correct a contribution allocation error that occurred before May 1, 2001, on its own initiative if it is discovered within 30 days of its first occurrence. No contribution allocation error that occurred before May 1, 2001, may be corrected if it is not the subject of a timely discovery.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of a payment to the TSP (other than a contribution allocation error as covered by paragraph (b)(2) of this section, or a retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim for correction of the error with his or her employing